

IN THE

Supreme Court, U. S.
FILED

MAY 17 1976

MICHAEL RODAK, JR., CLERK

United States Supreme Court

OCTOBER TERM, 1975

No. 75-**1 496 1**

CHARLES ROSS CARINO,

Appellant

vs.

ELLA T. GRASSO, GOVERNOR OF THE
STATE OF CONNECTICUT,

Appellee

MOTION TO AFFIRM

Robert E. Beach, Jr.
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Counsel for Appellee

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Pursuant to Rule 16 (1) (c) of the Supreme Court Rules, the appellee Governor Grasso moves this Court to affirm the judgement of the three-judge court entered in this case. The appellee urges that the question involved is so insubstantial as not to require extensive argument.

The appellee agrees with the facts and proceedings below as reported in the appellant's jurisdictional statement. The sole issue is whether the governor may constitutionally sign extradition warrants pursuant to §54-163 of the Connecticut General Statutes. The appellant maintains that such power violates at least the spirit of the Fourth Amendment, because the governor is not a neutral and detached magistrate; he relies principally on *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) and *United States v. United States District Court*, 407 U.S. 297 (1972). The appellee argued, and the three-judge District Court apparently agreed, that those cases were not applicable because they were not concerned with the peculiarly distinctive process of extradition.

The three-judge court held that extradition was mandated by an independent clause of the United States Constitution, Art. IV §2(2). This section specifically states that the demand is to be made by the executive authority of the state from which the subject fled. While the Constitution itself is silent as to on whom the demand is to be made, common sense indicates that it would be made on the comparable executive authority, especially in light of the treaty-like nature of extradition. In 1793, Congress passed the predecessor of 18 U.S.C. §3182 in order to implement the constitutional provision; here, it was specifically provided that the demand was to be made upon the executive authority of the asylum state. This Court has consistently emphasized that in issuing an extradition warrant, a governor is exercising a ministerial duty mandated by the extradition treaty. *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 106-07 (1860); *Roberts v. Reilly*, 116 U.S. 80, 94 (1885); *Appleyard v. Massachusetts*, 203 U.S. 222, 227 (1906); see also *Biddinger v. Commissioner of Police*, 245 U.S. 128, 132-35 (1917); *State ex rel. Wiley v. Waggoner*, 508 S.W. 2d 535 (Tenn. 1973). The Founding Fathers determined that extradition was in furtherance of a treaty to be executed by the governor, and their judgment has not yet been disturbed.

The relationship between extradition and the Fourth Amendment is not intricate. The Fourth Amendment states only, for purposes relevant here, that "no warrants shall issue, but upon probable cause. . . ." The federal extradition statute, 18 U.S.C. §3182, includes just such a requirement. There is no constitutional requirement that such probable cause be found by a judicial official; see *Shadwick v. Tampa*, 407 U.S. 345 (1971); probable cause must be found, however, by an unbiased official detached from the actual investigation. *Coolidge v. New Hampshire*, *supra*.

The crucial distinction between arrest or search warrants and extradition warrants is that the latter may not issue unless probable cause in the traditional sense has already been found by a neutral and detached magistrate in the demanding state. 18 U.S.C. §3182. Further, immediate judicial review of the governor's action is available by means of habeas corpus. See §54-166 of the Connecticut General Statutes; see also *Munsey v. Clough*, 196 U.S. 364, 372, 374-75 (1905); *McNichols v. Pease*, 207 U.S. 100, 109 (1907).

In conclusion, the appellee respectfully urges that neither the Fourth Amendment nor the due process requirement of the Fifth Amendment is threatened by the continued application of §54-163 of the Connecticut General Statutes and requests that the decision of the court below be summarily affirmed.

Respectfully submitted,

HONORABLE ELLA T. GRASSO

By _____

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CERTIFICATION

MAY 14
This is to certify that on ~~April~~ *MAY 14*, 1976, three copies of the foregoing was mailed to Hubert J. Santos, Esq., 51 Russ Street, Hartford, Connecticut 06106.

Robert E. Beach, Jr.